



COMES NOW the plaintiff, OWA, Inc., d/b/a Merck Family's Old World Christmas by and through its attorneys of record Gregg R. Smith of Paine Hamblen LLP, and complains as follows:

**I. SUBJECT MATTER JURISDICTION**

1.1 The subject matter jurisdiction that will enable this District Court to entertain this case arises pursuant to diversity of citizenship, 28 U.S.C. §1332.

1.2 Plaintiff is a Washington state domestic limited liability company which maintains its principal place of business within Spokane County, State of Washington.

1.3 Defendant Amanda's Christmas Company, Inc. is a Wisconsin domestic corporation with its principal place of business within the State of Wisconsin.

1.4 Defendant Boehlke is believed to be a resident of the State of Wisconsin at all times material.

1.5 The amount in controversy exceeds \$75,000, exclusive of costs and agreed upon attorney's fees. To-wit, the principal amount of the damages sustained by plaintiff is \$130,110.69, plus interest at the agreed upon interest rate, plus those agreed upon attorney's fees and costs.

COMPLAINT FOR DAMAGES REGARDING  
BREACH OF CONTRACT OF SALE OF GOODS  
AND MONEYS OWED - 2

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## II. PARTIES, JURISDICTION AND VENUE

2.1 By this reference, plaintiff hereby includes all prior allegations as if more fully set forth herein.

2.2 Plaintiff OWA, Inc., d/b/a Merck Family's Old World Christmas is a Washington domestic limited liability company with its principal place of business within Spokane County, State of Washington at all times material.

2.3 Defendant Amanda's Christmas Company, Inc. is a Wisconsin domestic business entity bearing entity I.D. number AO67548 and registered within the State of Wisconsin having an effective date of March 21, 2012.

2.3.1 The principal place of business of defendant Amanda's Christmas Company, Inc., is believed to be the State of Wisconsin.

2.3.2 The Registered Agent for Amanda's Christmas Company, Inc. on information and belief is Jason Boehlke, with business address of North 120 West 13537 Freistadt Road, Germantown, Wisconsin 53022.

2.4 Defendant Jason Boehlke is believed to be a Wisconsin resident at all times material and at no times material was defendant Boehlke a resident of the State of Washington.

2.5 Defendants agreed in writing that jurisdiction and venue for all disputes would lie within Spokane County, State of Washington.

1           2.6 Defendant Boehlke agreed in writing that any dispute would be  
2 subject to the jurisdiction and venue lying within Spokane County, State of  
3 Washington.  
4

5           2.7 In the alternative, defendants purposely did business within the State  
6 of Washington sufficient to give rise to personal jurisdiction pursuant to the  
7 Washington Long Arm Statute, RCW 4.28.185.  
8

9           2.8 Defendant Amanda's Christmas Company, Inc., purposely conducted  
10 business with plaintiff within the State of Washington by means of interstate  
11 commerce.  
12

13           2.9 Defendant Boehlke purposely conducted business with plaintiff within  
14 the State of Washington by means of interstate commerce.  
15

16           2.10 Neither defendant Amanda's Christmas Company, Inc., or defendant  
17 Jason Boehlke reside or are present within the State of Washington for purposes of  
18 service of legal process.  
19  
20  
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22  
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**DECLARATION OF PLAINTIFF'S ATTORNEY, GREGG R. SMITH**

I, GREGG R. SMITH, attorney for the herein-captioned plaintiff, after a diligent search of the available records can assert that the herein-captioned defendants cannot be served with legal process within the State of Washington, to-wit: the business address of defendant Amanda's Christmas Company, Inc., is North 120 West 13537 Freistadt Road, Germantown, Wisconsin 53022, as set forth on the corporate records of Amanda's Christmas Company maintained by the Wisconsin Secretary of State's Office. Defendant Jason Boehlke is the registered agent for Amanda's Christmas Company, Inc., as also set forth within those records maintained by the Wisconsin Secretary of State. The business address shown for defendant Jason Boehlke is North 120 West 13537 Freistadt Road, Germantown, Wisconsin 53022.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed in Spokane, Washington this 8th day of January, 2014

ls\ Gregg R. Smith  
Gregg R. Smith

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**III. VENUE IS PROPER WITHIN THE EASTERN DISTRICT OF WASHINGTON, MORE SPECIFICALLY SPOKANE COUNTY, STATE OF WASHINGTON, AS AGREED TO IN WRITING BETWEEN THE PARTIES HERETO.**

3.1 By this reference, plaintiff hereby includes all prior allegations as if more fully set forth herein.

3.2 Venue is proper within Spokane, Washington, as this venue and jurisdiction was agreed by the parties in writing.

3.3 Alternatively, venue is proper within the Eastern District of Washington, more particularly Spokane County, State of Washington, as this is the situs of all matters giving rise to this cause of action.

**IV. RELEVANT FACTS GIVING RISE TO THIS DISPUTE**

4.1 By this reference, plaintiff hereby includes all prior allegations as if more fully set forth herein.

4.2 Plaintiff and defendants are merchants as defined by RCW 62A.2-201(1).

4.3 Plaintiff and defendants entered into a written agreement for the sale of goods sold by plaintiff and which were purchased by defendant. The date in

1 which defendants signed the original contract with plaintiff was July 14, 2012  
2 which is accepted by plaintiff on August 1, 2012.

3  
4 4.4 The written agreement signed by the defendant included the various  
5 terms and conditions imposed by the plaintiff, including but not limited to the  
6 payment terms, finance changes, personal guarantee, and agreed upon jurisdiction  
7 and venue.  
8

9 4.5 Any terms and conditions not fully set forth within the written  
10 agreement were included by means of conduct of the parties throughout the course  
11 of doing business, pursuant to RCW 62A.2-204.  
12

13 4.6 Plaintiff shipped goods to defendants as evidenced by numerous  
14 invoices from the time period commencing on or about December 18, 2012 and  
15 thereafter.  
16

17 4.7 Each invoice submitted by plaintiff to defendant set forth the material  
18 terms and conditions of the contract between the parties.  
19

20 4.8 Defendants signed an Order Acknowledgement dated January 12,  
21 2013, that reaffirmed the personal guarantee, as well as other contractual  
22 provisions. Said Order Acknowledgement was signed by defendant Boehlke in his  
23 individual capacity.  
24

1           4.9 Plaintiff accepted defendants offer to purchase those goods sold by  
2 plaintiff to defendant upon acceptance of the merchandise order submitted by  
3 defendants.  
4

5           4.10 Defendants' Order of goods from plaintiff constituted a contractual  
6 offer in anticipation of acceptance thereof on the part of plaintiff.  
7

8           4.11 Plaintiff accepted defendants' Order, which together constituted an  
9 offer and acceptance pursuant to RCW 62A.2-206 and RCW 62A.2-207.  
10

11           4.12 Defendants accepted those goods shipped by plaintiff.

12           4.13 Defendants did not make any claim of defect, or nonconformity in  
13 those goods shipped by plaintiff and accepted by defendants. As set forth within  
14 the written terms and conditions the defendants agreed in writing that any defects  
15 or nonconformity of those goods shipped required plaintiff to be notified within 15  
16 days of the date of shipment.  
17

18           4.14 Plaintiff has been damaged by defendants' failure or otherwise refusal  
19 to pay the agreed upon purchase price of those goods shipped by plaintiff to  
20 defendant.  
21

22           **V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**  
23

24           5.1 By this reference, plaintiff hereby includes all prior allegations as if  
25 more fully set forth herein.  
26

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1           5.2 Defendants entered into a binding contract with plaintiff for the  
2 purchase of goods.

3  
4           5.3 Plaintiff performed all contractual obligations required of plaintiff to  
5 defendant.

6           5.4 Defendants have materially breached the contract with plaintiff by its  
7 failure or refusal to pay for the goods sold by plaintiff.

8  
9           5.5 Defendant failed and/or otherwise refused to pay for those goods it  
10 had purchased from plaintiff upon those terms and conditions set forth within the  
11 written contracts. The principal amount of the debt owed to plaintiff is  
12 \$130,110.69.

13  
14           5.6 The parties agreed that all amounts due and owing to plaintiff would  
15 incur finance charges after 30 days in the amount of 1.5% per month. the debt  
16 owed to plaintiff has accrued interest through January 7, 2014 in the amount of  
17 \$16,969.09 plus per diem interest of \$65.32 through the date of judgment.

18  
19           5.7 Defendant Boehlke as a part of the written contract between plaintiff  
20 and defendants agreed to be personally liable and to guarantee the debts incurred  
21 by defendant Amanda's Christmas Company, Inc. to plaintiff.  
22  
23  
24  
25

1           5.8 Defendant Boehlke signed various personal guaranties of the amounts  
2 owed to plaintiff.

3  
4           5.9 As more fully set forth within the written Order Acknowledgement,  
5 dated January 12, 2013, defendant Boehlke signed a personal guarantee in his  
6 individual capacity. Said personal guarantee by its specific terms stated: "The  
7 undersigned hereby personally guarantees, unconditionally, and promises to pay  
8 Seller each item of indebtedness incurred by the customer heretofore or hereinafter  
9 incurred. This is a Continuing Personal Guarantee. It shall remain in full force  
10 until and unless the Seller receives a written notice revoking it subsequent to the  
11 debt being incurred. Such revocation shall not affect any of the obligations  
12 incurred prior to revocation. All Orders are subject to acceptance by Home Office  
13 in Spokane, Washington."

14  
15           5.10 Defendant Boehlke agreed in writing to pay those reasonable  
16 attorney's fees and costs, as well as all other terms and conditions set forth in said  
17 Continuing Personal Guarantee.

18  
19  
20  
21           **VI. SECOND CAUSE OF ACTION: MONIES OWED TO PLAINTIFF**

22           6.1 By this reference, plaintiff hereby includes all prior allegations as if  
23 more fully set forth herein.

24  
25           6.1.3 Defendants are indebted to plaintiff in the principal amount of

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1 \$130,110.69, plus agreed upon interest at the contract interest rate of 1.5% per  
2 month in the amount of \$16,968.09 calculated through January 7, 2014.

3  
4 6.2 Defendants are furthermore indebted to plaintiffs in the amount of the  
5 agreed upon legal fees and costs, in those amounts to be determined at the time of  
6 trial or entry of final judgment.

7  
8 6.3 Demand was made by plaintiffs to defendants, both verbal and in  
9 writing with regard to the principal amount of the debt which is due and owing,  
10 plus interest, plus all other agreed upon fees and expenses.

11  
12 6.4 Defendants have failed or refused to pay those sums of money which  
13 are due and owing to plaintiff, and more fully set forth herein.

14  
15 6.5 Plaintiff has been damaged as a result of defendants' failure and/or  
16 refusal to pay those sums of money that are due and owing.

17  
18 6.6 Defendant Boehlke has guaranteed, in writing, the payment of those  
19 sums of money owed by Amanda's Christmas Company, Inc. to plaintiff.

## 20 **VII. PRAYER FOR RELIEF**

21 NOW, THEREFORE, plaintiff prays for the entry of judgment in its favor  
22 and against the defendants as follows:

23  
24 7.1 Judgment in favor of the plaintiff for the principal amount of those  
25 damages that have been proven in the amount of \$130,110.69;

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1           7.2   That plaintiff be awarded pre-judgment interest according to the terms  
2 and conditions of the written agreements in the amount of one and one-half percent  
3 (1½%) per month through the date of judgment, including \$16,968.09 as calculated  
4 through January 7, 2014, and a per diem amount thereafter in the amount of \$65.32  
5 until judgment is finally entered;  
6

7  
8           7.3   The award of those reasonable attorney's fees and costs incurred by  
9 plaintiff an amount to be determined at the time of trial plus those costs, as  
10 specifically agreed to by and between the parties hereto in amounts to be  
11 determined at time of trial;  
12

13           7.4   For the award of post-judgment interest at the contract rate of 1.5%  
14 per month or 18% per annum, as agreed to by the parties pursuant to their written  
15 agreement, as allowed by RCW 4.56.110(1);  
16

17           7.5   That plaintiff be allowed to freely amend its Complaint; and  
18

19           7.6   Entry of all other just and equitable remedies as may be permitted by  
20 law.  
21

22           RESPECTFULLY SUBMITTED this 15th day of January, 2014.  
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1 PAINE HAMBLLEN LLP

2 /s/ Gregg R. Smith

3 Gregg R. Smith, WSBA #15553

4 Attorneys for Plaintiff

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